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**IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

KANE COUNTY, UTAH (2), (3) and (4),
a Utah political subdivision; and STATE OF
UTAH,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant,

NOTICE

Case No. 2:10-cv-01073

(consolidated with 2:11-cv-1031, 2:12-cv-476)

Judge: Hon. Clark Waddoups

Plaintiff Kane County, Utah provides the following notice. In 2012, Kane County provided notice that it would maintain and repair the K3400D Seaman Spring road in the Grand

Staircase-Escalante National Monument (“Monument”) due to a large rockslide that damaged the road. *See Kane County Notice of Maintenance and Repair*, ECF 60. The purpose for the notice was that the United States had moved to dismiss 51 roads from Kane County’s title suit because of the lack of a disputed title. *Id.* at 2. It would be inconsistent for the United States to contend that it does not dispute Kane County’s title and also object to Kane County’s road maintenance.

After Kane County completed the work, the United States informed the Court that the Bureau of Land Management’s (“BLM”) staff reviewed the work “and that such repairs were a routine matter and were *conducted within the previously disturbed surface of the roadway.*” United States’ Response to Notice of Maintenance and Repair, ECF 62, at 2 (emphasis added).

Historically, and under Kane County’s and the BLM’s practice, Kane County would install culverts and drainage features where needed to prevent repeated damage to the roads. Culverts are necessary to maintain the safe, reasonable and necessary operation of many of the county’s roads.

Several years ago, the United States won dismissal of the Sand Dunes Road from Kane County’s title suit on grounds that the United States had not disputed title to the road. *See Kane County v. United States*, 772 F.3d 1205, 1213 (1214). When a flash flood damaged a section of the Sand Dunes Road, the BLM quickly called to ask Kane County to fix the road. Photographs of Kane County’s culvert and the damage to the Sand Dunes Road were introduced during the Bellwether Trial as Exhibits 320 and 321, and an excerpt of Exhibit 321 is included below.



Since at least as early as 2019, Kane County has informed the BLM of the serious need for box culverts to be installed on the K6000 House Rock Valley Road at the Buckskin Gulch crossing. Kane County attempted to consult with the BLM regarding the culverts, but the BLM declined. *See generally* Motion for Relief, ECF 734.

In December 2022, the United States filed its Renewed Motion to Dismiss, ECF 755, and included the K6000 House Rock Valley Road because it contends it has not disputed Kane County's title to the road. The United States further contends that the Court cannot order it to consult with Kane County.

Kane County has and will comply with the law and the parties' historical practice of Kane County maintaining and repairing its roads with drainage features including culverts. Maintenance includes maintaining drainage and "installing, maintaining, repairing, and replacing culverts as necessary to protect the existing surface from erosion." Utah Code § 72-5-301(n). Moreover, the United States cannot "by delay or by unreasonable disapproval, [] impair the rights of the holder of the R.S. 2477 right of way." *SUWA v. BLM*, 425 F.3d 735, 748 (10th Cir. 2005).

In the last few years, the BLM has constructed a large parking lot and extra facilities south of the Buckskin Gulch, and it has multiplied the daily permits bringing new visitors to The Wave and areas nearby. Flash flooding in the Buckskin Gulch leaves the road impassable, filled with rocks and mud, and prevents travel between Highway 89, in Utah, and Highway 89A in Arizona. In fact, a secondary crossing has been created to circumvent rocks and debris on the main K6000 House Rock Valley Road. The need for a solution is especially pressing with the number of new visitors and the need to keep the areas open for law enforcement and emergency response vehicles. Moreover, the crossing is far away from Kanab and Kane County can no longer be expected to spend excess resources to merely arrive with heavy equipment to keep the road open again and again.

Accordingly, Kane County provides this notice that it intends to install box culverts in the Buckskin Gulch crossing on the K6000 House Rock Valley Road as early as Monday, April 22, 2024. The culverts will be installed within the disturbed area of the road, and will be braced with rock gabions and dirt that Kane County has previously removed from the crossing.

If Kane County is ultimately determined not to own the K6000 House Rock Valley Road, it will remove the culverts.

RESPECTFULLY SUBMITTED this 16th day of April 2024.

HOLLAND & HART LLP

/s/ Shawn Welch

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